



# United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Boise District  
Bruneau Field Office  
3948 Development Avenue  
Boise, Idaho 83705  
<http://www.id.blm.gov/offices/boise>



In Reply Refer To:  
4160 (ID-020)

February 4, 2013

**CERTIFIED MAIL -7011 2970 0002 6304 8329- RETURN RECEIPT REQUESTED**

JR Simplot Co dba Cat Cattle Company  
c/o Chuck Jones  
1301 Hwy 167  
Grand View, Idaho 83624

## **Notice of Field Manager's Full Force and Effect Final Decision**

Dear Mr. Jones:

### **Introduction**

The Mustang wildfire burned August 10-18, 2012. It burned approximately 16,684 acres, consisting of 3,369 acres of BLM-administered land, 12,699 acres of Forest Service administered land, and 615 acres of private land. All but 35 acres of this fire occurred in northern Nevada, just south of the Idaho-Nevada state line. The fire burned 1,331 BLM acres or 3% of the Alzola Allotment and 1,970 BLM acres or 23% of the Scott Table Allotment.

The BLM administered land in Nevada is managed by the BLM Boise District for the BLM Elko District under a Memorandum of Understanding.

The majority of the burned area consisted of low sagebrush with an understory of native perennial grasses and forbs. Also, the fire burned small areas of big sagebrush and antelope bitterbrush with an understory of native perennial grasses and forbs.

The fire occurred in Preliminary Priority Habitat (PPH) for greater sage grouse (*Centrocercus urophasianus*), a candidate species for listing under the Endangered Species Act. There are 2 active leks within the fire's boundaries and 3 active leks within 1½ miles of the fire perimeter.

Pygmy rabbit (*Brachylagus idahoensis*) is a BLM special status species in the area. Big game (elk, mule deer, and antelope) use this area in high densities primarily as winter range and during the spring, summer and fall in low densities.

The Mustang Fire Emergency Stabilization (ES) and Burned Area Rehabilitation (BAR) Plan authorized the following:

1. Repair of existing allotment boundary and pasture fences.
2. Approximately 2 miles of temporary let-down fence with anti-collision marker and posts with white tops will be built in the Last Chance pasture of the Alzola Allotment to prevent cattle from grazing the Mustang Fire burned area. The fence will be built to Boise District Office pronghorn antelope specifications (bottom wire will be smooth). Construction of the fence will occur approximately during July 2013.
3. Noxious weeds will be controlled on an as-needed basis.
4. Mountain big sagebrush and Sherman big bluegrass will be aerially seeded on the burned area.

### **Determination of Land Use Plan Conformance and NEPA Adequacy**

Determination of Land Use Plan Conformance and National Environmental Policy Act (NEPA) Adequacy (DNA) DOI-BLM-ID-B020-2012-0012-DNA<sup>1</sup> concluded that the Mustang Fire ES and BAR Plan conforms to the 1983 Bruneau Management Framework Plan and is fully covered by the following NEPA documents, which constitutes BLM's compliance with the requirements of NEPA:

1. Normal Fire Emergency Stabilization and Rehabilitation Plan (NFESRP) Environmental Assessment (EA) ID-090-2004-050 (2005);
2. BLM Vegetation Treatments Using Herbicides Final Programmatic Environmental Impact Statement (EIS; 2007);
3. Noxious and Invasive Weed Treatment for the Boise District and Jarbidge Field Offices EA ID-100-2005-EA-265; and
4. Bruneau-Kuna Grazing EIS (1982).

This decision incorporates by reference these documents in their entirety.

### **Full Force and Effect Final Decision**

My decision is to temporarily close the south portion of the Last Chance pasture of the Alzola Allotment, which contains areas burned in the Mustang Fire, to livestock grazing (see attached map). The Mustang fire burned 3% percent of the Alzola Allotment. Since this is a very small portion of the allotment, there is no formal reduction in allowable grazing use. Rather, the level

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<sup>1</sup> The Mustang Fire ES and BAR Plan, Decision Record and Rationale, and DNA DOI-BLM-ID-B020-2012-0012-DNA are available through [https://www.blm.gov/epl-front-office/eplanning/nepa/nepa\\_register.do](https://www.blm.gov/epl-front-office/eplanning/nepa/nepa_register.do). Select State = **Idaho**, Office = **ID-Bruneau FO**, Document Type = **DNA**, Fiscal Year = **All**, Program = **All**, then click **Search**. Once there, click on **Mustang Fire #G5SF Emergency Stabilization and Rehabilitation Plan**. If you are unable to view the documents on the website, you may request that hard copies be sent to you.

of grazing will continue to be limited to 50 percent utilization, and grazing use in the unburned portions of the Last Chance Pasture will be deferred until fall.

You are required to herd cattle away from the burned area until the temporary protection fence can be constructed. Once the fence is constructed, you are required to maintain it including putting the fence up when cattle are present in the pasture and letting it down when they are removed from the pasture. The burned area will be visited by BLM personnel during the grazing season to ensure that you have successfully kept livestock away from the burned area.

Effectiveness will be measured by site visits and the lack of evidence of livestock use within the burned area. Livestock not in compliance with this requirement will be subject to 43 CFR 4140.1 (b)(1)(iii) Prohibited Acts and 4150.1 Unauthorized Grazing Use.

This decision is final and effective upon receipt in accordance with 43 CFR 4110.3-2(a), 4110.3-3(b), and 4160.3(f). It remains in effect until the Livestock Closure Effectiveness Monitoring Objectives in the Mustang Fire ESR Plan are met or the seeding is determined not to be successful.

### **Rationale**

This final decision is in conformance with the Bruneau MFP, the Idaho Standards for Rangeland Health and Guidelines for Livestock Grazing Management (1997), and the Boise District NFESRP.

The DNA determined that the proposed emergency stabilization and rehabilitation activities were adequately addressed in EA No. ID-090-2004-EA-050, the Boise District NFESRP EA.

Closing the burned area to livestock grazing will protect the aerially seeded areas to allow establishment of seeded species and the natural recovery of existing vegetation. Allowing the establishment of seeded species and recovery of existing vegetation will aid in preventing erosion, provide competition against invasive species, and restore habitat for sage-grouse and several other BLM sensitive wildlife species associated with the sagebrush steppe. Deferring grazing until fall in the unburned portions of the Last Chance Pasture will help address impacts of the Mustang Fire to sage-grouse nesting habitat by avoiding any potential grazing impacts during the nesting season to the pasture's unburned nesting habitat and to sage-grouse nesting in the pasture, including hens displaced by the fire.

The temporary fence will be designed as a let-down type and will be down when livestock are not in the pasture. Installing let-down fence with markers will minimized the effect on sage-grouse in the area surrounding the burn. Fence construction will occur after the sage-grouse nesting season. This will reduce the potential for sage-grouse to collide with the fence or be disturbed by the fence construction activities themselves.

### **Authority**

The authority under which this decision is being issued is found in Title 43 of the Code of Federal Regulations (CFR) Subpart 4100.

- 4110.3-2(a) Decreasing permitted use (Suspending permitted use on a temporary basis due to fire)
- 4110.3-3(b) Implementing reductions in permitted use (due to fire)
- 4160.3(f) Final decisions (effective upon issuance)

**Provisions for Appeal/Stay**

Any applicant, permittee, lessee or other person whose interest is adversely affected by the final decision may file an appeal (in writing) in accordance with 43 CFR 4.470 and 43 CFR 4160.4. The appeal must be filed within 30 days following receipt of the final decision. The appeal may be accompanied by a petition for a stay of the decision in accordance with 43 CFR 4.471, pending final determination on appeal. The notice of appeal and petition for a stay must be filed in the office of the authorized officer (Bruneau Field Manager) at 3948 Development Avenue, Boise, Idaho 83705. In accordance with 43 CFR 4.401, BLM does not accept fax or email filing of a notice of appeal or a petition for stay. The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error. The appeal must comply with the provisions of 43 CFR 4.470. The appellant must serve a copy of the appeal by certified mail on the Office of the Solicitor, U.S. Department of the Interior, 960 Broadway Avenue, Suite 400, Boise, ID 83706 and other person(s) named (43 CFR 4.421 (h)) in the **Copies sent to:** section of this decision.

Should you wish to file a motion for stay, see 43 CFR 4.471 (a) and (b). In accordance with 43 CFR 4.471(c), a petition for a stay must show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied;
- (2) The likelihood of the appellant's success on the merits;
- (3) The likelihood of immediate and irreparable harm if the stay is not granted; and
- (4) Whether the public interest favors granting the stay.

As noted above, the petition for stay must be filed in the office of the authorized officer and served in accordance with 43 CFR 4.471.

Any person named in the decision that receives a copy of a petition for a stay and/or an appeal must see 43 CFR 4.472(b) for procedures to follow if you wish to respond.

If you have any questions, feel free to contact either Jon Haupt at 208-384-3371 or me at 208-384-3331.

Sincerely,

/s/

Arnold L. Pike  
Field Manager

**Attachment:** Map

**Copies sent to:**

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